

## **AGREEMENT FOR ROAD RATING SERVICES**

**THIS AGREEMENT FOR ROAD RATING SERVICES** (this "Agreement") is entered into as of the date written below between the City of Bainbridge Island, a Washington state municipal corporation (the "City") and [\_\_\_\_\_] (the "Vendor").

**WHEREAS**, the City desires to obtain road rating pavement condition services; and

**WHEREAS**, the Vendor has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Vendor as follows:

### **1. SERVICES BY VENDOR**

The Vendor shall provide the road rating services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as Attachment A and incorporated herein by this reference as if set forth in full. The Vendor shall furnish all services, labor and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

### **2. PAYMENT**

A. The City shall pay the Vendor for such services: (check one)

[ ] Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of \$\_\_\_\_;

[X] Fixed Sum: a total amount of \$\_\_\_\_\_;

[ ] Other: \_\_\_\_\_, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts.

B. The Vendor shall submit monthly invoices for services performed in a previous calendar month in a format acceptable to the City. Each project and each task within a project shall be the subject of a separate invoice. The Vendor shall maintain time and expense records and provide them to the City upon request.

C. All invoices shall be paid by mailing a city check within sixty (60) days of receipt of a proper invoice.

D. If the services rendered do not meet the requirements of this Agreement, the Vendor shall correct or modify the work to comply with this Agreement. The City may withhold payment for such work until it meets the requirements of this Agreement.

### **3. INSPECTION AND AUDIT**

The Vendor shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Vendor shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Vendor shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Vendor shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

### **4. INDEPENDENT CONTRACTOR**

A. The Vendor and the City understand and expressly agree that the Vendor is an independent contractor in the performance of each and every part of this Agreement. The Vendor expressly represents, warrants and agrees that the Vendor's status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Vendor, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Vendor shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

B. The Vendor shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Vendor shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Vendor performs hereunder.

D. The Vendor shall obtain a business license and, if applicable, pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

### **5. DISCRIMINATION AND COMPLIANCE WITH LAWS**

A. The Vendor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

B. The Vendor shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 5 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

## **6. TERM AND TERMINATION OF AGREEMENT**

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect until December 31, 2014, unless sooner terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the Vendor pursuant to this Agreement shall be submitted to the City, and the Vendor shall be entitled to just and equitable compensation at the rate set forth in Section 2 for any satisfactory work completed prior to the date of termination.

## **7. OWNERSHIP OF WORK PRODUCT**

All data, materials, reports, memoranda and other documents developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

## **8. GENERAL ADMINISTRATION AND MANAGEMENT**

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

## **9. HOLD HARMLESS AND INDEMNIFICATION**

A. The Vendor agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of the Vendor, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of the Vendor under this Agreement.

B. In the event that the Vendor and the City are both negligent, then the Vendor's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the Vendor, its officers, employees and agents.

C. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the immunity of the Vendor under Washington's Industrial Insurance Act, RCW Title 51, as respects the other parties only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the employees of the Vendor. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

D. The City's inspection or acceptance of any of the Vendor's work when completed shall not be grounds to void, nullify and/or invalidate any of these covenants of indemnification.

E. Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.

F. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

## **10. INSURANCE**

Vendor shall maintain insurance as follows:

- ☐ Commercial General Liability as described in Attachment B.
- ☐ Professional Liability as described in Attachment B.
- ☐ Automobile Liability as described in Attachment B.
- ☐ None.

## **11. SUBLETTING OR ASSIGNING CONTRACT**

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Vendor to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Vendor as stated herein.

## **12. EXTENT OF AGREEMENT/MODIFICATION**

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

## **13. SEVERABILITY**

A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the

State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

#### **14. FAIR MEANING**

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

#### **15. NON-WAIVER**

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

#### **16. NOTICES**

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City:                      City of Bainbridge Island  
   280 Madison Avenue North  
   Bainbridge Island, WA 98110  
   Attention: City Manager

To the Vendor:                      \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

#### **17. SURVIVAL**

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

#### **18. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**19. VENUE**

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

**20. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of \_\_\_\_\_,  
20\_\_.

[INSERT NAME OF VENDOR]

CITY OF BAINBRIDGE ISLAND

By \_\_\_\_\_

By \_\_\_\_\_

Douglas Schulze, City Manager

Name \_\_\_\_\_

Title \_\_\_\_\_

Tax I.D. # \_\_\_\_\_

City Bus. Lic. # \_\_\_\_\_

City Contact: Larry Ward, Project Manager  
Email: lward@bainbridgewa.gov  
Phone: 206.780.3746

## ATTACHMENT A SCOPE OF SERVICES

**Scope of Work:** The scope of work includes, but is not necessarily limited to, the following tasks;

1) ***A PCI based Pavement Condition Survey*** - All of the approximately 137 miles of paved streets in the City limits will be included in the scope of the project; the protocol for the survey will be based on the specifications and methodologies described by ASTM Standard D6433-11 “Standard Practice for Road and Parking Lots Pavement Condition Index (PCI) Surveys”. The survey will be conducted for each street segment as currently identified in the City’s Micro Paver Data base.

2). ***Pavement Condition Survey Report*** – The vendor shall prepare a Pavement Condition Survey report. The report shall contain a summary of the PCI data collected, and a final PCI rating for each street, as well as an executive summary of the recommended City-wide levels of maintenance, indexed by year to be performed, sorted by PCI brackets, and including tallied estimates of the various categories of maintenance work required.

***3) Delivery of the results of the field survey via the MicroPaver database***

a. All PCI data collected in Task 1 will be stored in a MicroPaver database v 6.5.1 or the most recent version.

b. The vendor shall acquire a site license for MicroPaver for the City Bainbridge Island, Department of Public Works with two-year maintenance and support; the minimum number of seats of MicroPaver to be provided shall be 4.

c. At the completion of the PCI survey all of the results as stored in the MicroPaver database will be migrated to the City’s installation (if not already there).

***Description of roadway network***

The City of Bainbridge Island has divided its roadway network into 6 classifications, Primary Arterial, Secondary Arterial, Collector, Residential Urban, Residential Suburban, and private roads. The road network consists of predominately rural 2 lane asphalt roadways, with shoulders.

***Work does not include Federally Classified Roadways***

The City of Bainbridge Island has several roads that are federally classified roadways, these roads are not included as part of this project. A map of these federally classified roads can be found in Attachment D.

***Description of PCI score information collected***

The survey will be based on the specifications and methodologies described by ASTM Standard D6433-11 “Standard Practice for Road and Parking Lots Pavement Condition Index (PCI) Surveys”.

***Request for value added services as additive options.***

If there are other value added services that the Vendor believes may be useful to the City please provide information and pricing. Please provide a base price for PCI scoring and additive quotes for additional services.

***Description of software used for PMS program.***

MicroPAVER software is marketed to cities and counties across America by American Public Works Association (AWPA). It was also invented by the U.S. Army Center for Public Works. A PMS, like MicroPAVER, is a valuable tool that alerts the pavement manager to the critical point in a pavement’s life cycle.

MicroPAVER provides a means to inventory pavement infrastructure, assess its current and projected condition, and determine budget needs to maintain the pavement condition above an acceptable threshold level, identify work requirements, prioritize projects, and optimize spending of maintenance funds.



## **ATTACHMENT B**

Insurance against claims for injuries to persons or damage to property arising out of or in connection with the performance of this Agreement by the Vendor, its officers, employees and agents:

A. Automobile Liability Insurance with limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage.

B. Commercial General Liability Insurance written on an occurrence basis with limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

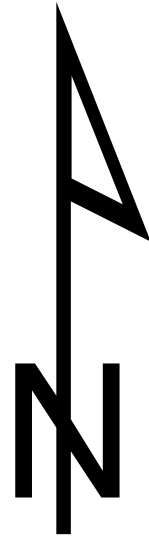
C. Professional Liability Insurance with limits no less than \$1,000,000.00 limit per occurrence.

Before commencing work and services, the Vendor shall provide to the person identified in Section 16 of the Agreement a Certificate of Insurance evidencing the required insurance. City reserves the right to request and receive a certified copy of all required insurance policies.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Vendor. City shall be named as an additional insured on the Commercial General Liability Insurance Policy, with regard to work and services performed by or on behalf of the Vendor, and a copy of the endorsement naming City as an additional insured shall be attached to the Certificate of Insurance.

The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to City; and (3) shall state that City will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.





ATTACHMENT C  
Map of Bainbridge Island's  
Paved Roadway Network  
by Roadway Classification

Legend

Driveways

Highway

Street Classifications

Rd\_Class

Unknown

Primary Arterial

Secondary Arterial

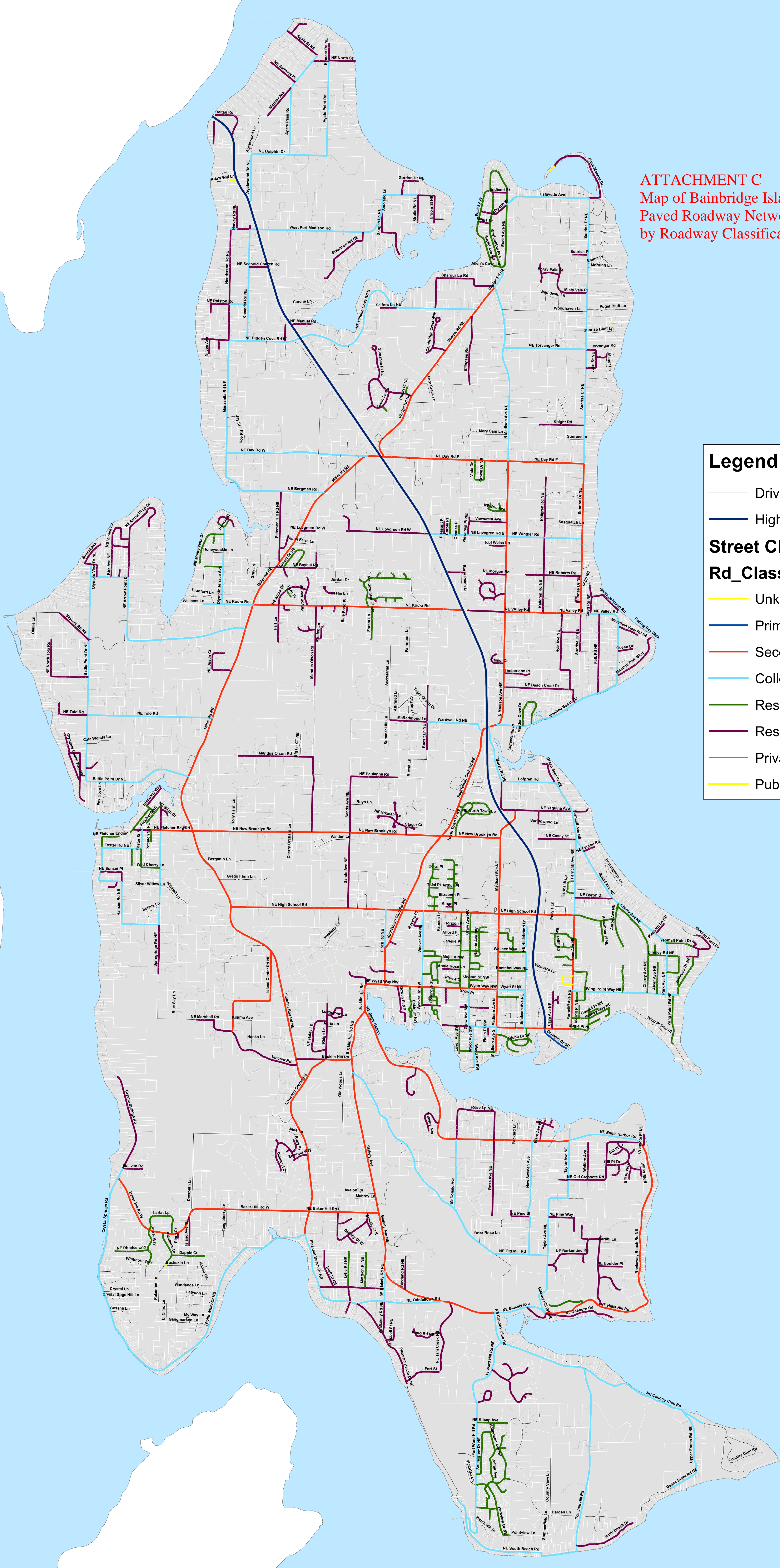
Collector

Residential Urban

Residential Suburban

Private

Public





# Proposed Federal Roadway Classifications

## ATTACHEMENT D Federally Classified Roadways

### Legend

#### Streets

- Streets
- Secondary Arterial
- Proposed Secondary Arterial
- Collector
- Proposed Collector
- Highway
- Shoreline
- waterbackground

Coordinate System: NAD 1983 StatePlane Washington North FIPS 4601 Feet  
Projection: Lambert Conformal Conic  
Datum: North American 1983  
False Easting: 1,640,416.6667  
False Northing: 0.0000  
Central Meridian: -120.8333  
Standard Parallel 1: 47.5000  
Standard Parallel 2: 48.7333  
Latitude Of Origin: 47.0000  
Units: Foot US

Date: 1/26/2012  
User: grobinson

0 0.25 0.5 1 1.5 2 Miles